

L. TREVOR GRIMM, ESQ., SBN 186801  
**MANNING & KASS**  
**ELLROD, RAMIREZ, TRESTOR LLP**  
 15th Floor at 801 Tower  
 801 South Figueroa Street  
 Los Angeles, CA 90017  
 Telephone: (213) 624-6900  
 Email: ltg@mmker.com

Attorneys for Defendants  
 COUNTY OF LOS ANGELES, CHRISTINA  
 MARTINEZ , CASEY CHESHER and ADAM  
 PRUITT

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

JAMES (JIM) OWENS,  
 Plaintiff,

vs.

COUNTY OF LOS ANGELES,  
 DEPUTY MARTINEZ, DEPUTY  
 SHESHIRE, DOES 1-10, inclusive,

Defendants.

Case No.: CV08-07116 DMG (Ex)  
*[Assigned to Judge Dolly M. Gee;  
 Courtroom 7]*

**NOTICE OF MOTION AND  
 MOTION IN LIMINE NO. 2 TO  
 EXCLUDE EVIDENCE THAT THE  
 PLAINTIFF SUFFERED AN  
 INJURY TO HIS KNEE IN THIS  
 INCIDENT; DECLARATION OF  
 L. TREVOR GRIMM**

***[(Proposed) Order Filed Concurrently  
 Herewith]***

Trial Date: February 28, 2012  
 Time: 8:30 a.m.

Final PTC: January 30, 2012  
 Time: 1:30 p.m.

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

NOTICE IS HEREBY GIVEN that on January 30, 2012 at 1:30 p.m. in Court-  
 room 7 of the United States District Court for the Central District of California, located  
 at 312 North Spring Street, Los Angeles, CA 90012, defendant CASEY CHESHER  
 will and hereby does move this Court for an order excluding evidence of any injury

1 to the plaintiff's knee allegedly suffered by the plaintiff as a result of the incident at  
2 issue in this lawsuit. The grounds for this Motion are *Federal Rules of Evidence*,  
3 Rules 401 - 403.

4 This Motion is based upon this Notice of Motion, the attached Memorandum  
5 of Points and Authorities and declaration of L. Trevor Grimm, the pleadings and  
6 papers on file with the Court, and upon such argument and evidence, both oral and  
7 documentary, as the Court may entertain at the hearing of this Motion.

8 Counsel for the defendant has emailed and mailed correspondence to plaintiff's  
9 counsel outlining the defendant's proposed motions in limine and the bases therefore,  
10 and defense counsel has spoken on more than one occasion with plaintiff's counsel,  
11 Gary Casselman, in an attempt to obviate the necessity of bringing this motion.  
12 However, the parties were unable to agree upon a solution short of motion practice. See  
13 Declaration of L. Trevor Grimm, paragraph 4.

14  
15 Dated: January 9, 2012

**MANNING & KASS  
ELLROD, RAMIREZ, TRESTOR LLP**

16 By: /s/ **L. Trevor Grimm**

17 L. TREVOR GRIMM  
18 Attorneys for Defendants  
19 COUNTY OF LOS ANGELES, CASEY  
20 CHESHER, ADAM PRUITT and  
21 CHRISTINA MARTINEZ  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### INTRODUCTION

At the first trial of this matter, two claims were pursued by the plaintiff: that he was the subject of an illegal stop and search and that he was subjected to excessive force during the course of that detention. The jury found for the defendant on both counts. This Court, in its order of July 5, 2011 (Docket No. 136), granted the plaintiff's motion for judgment as a matter of law as to the illegal stop and search claim and denied the plaintiff's motion for new trial as to the excessive force claim, thereby affirming the jury's verdict on the excessive force claim.

This Court, in its order of September 7, 2011 (Docket No. 145, at page 3), held that "a new trial is warranted on damages" on the plaintiff's claim that he was "injured during the detention and search." As this Court explained, quoting from *Cortez v. McCauley*, 478 F.3d 1108, 1127 (10th Cir. 2007) (*en banc*), "[i]f the plaintiff can prove that the officers lacked probable cause, he is entitled to damages for the unlawful arrest, which includes damages resulting from any force reasonably employed in effecting the arrest."

However, given the findings made by the jury in the prior trial, the plaintiff cannot claim that his knee was injured during the detention and search by Deputy Cheshier, and accordingly he should not be permitted to offer any evidence at this new trial of any such knee injury.

### 1. THE PARTIES' TESTIMONY AT THE FIRST TRIAL

At the first trial, the plaintiff testified that after he was ordered to put his hands behind his back by Deputy Cheshier, the deputy grabbed the plaintiff's thumbs and kicked the plaintiff's legs apart. RT 10/6/10, pages 71-74.

"Q. Can you tell the jury, to the best of your recollection, what your body did when he kicked it, kicked at your foot or ankle?"

1 A. When my heel went outward, and so the lower part of my leg  
2 completely twisted, and I lost my balance because my foot started to slip  
3 away, and I felt just extreme pain at that moment, and I lost my balance.  
4 But with deputy holding my hands and my other leg, I've got to control my  
5 balance and stand back up.

6 Q. Where did you feel the pain?

7 A. In my knee, on the inside.

8 Q. Is that a place where you had felt that kind of pain or any kind of pain  
9 before?

10 A. No.

11 Q. Was that similar to the osteochondroma problem you had above your  
12 knee?

13 A. That was extremely worse than any type of pain I've ever had in my  
14 knee.”

15 RT 10/6/10, page 75, lines 5-22.

16 The plaintiff offered at the first trial the expert testimony of an orthopedic  
17 surgeon, Dr. Robert B. Fenton. Dr. Fenton testified that the plaintiff had told him that  
18 “the officer had him spread his legs, and that he had been kicked or pushed, his foot has  
19 been pushed out to the side while he was standing on the leg, and that in the process of  
20 doing this, he created discomfort and pain on the inner-side of his knee.” RT 10/7/10,  
21 page 197, lines 18-22.

22 “His feet were spread apart, like this (demonstrating), and as the officer  
23 apparently applied some force to the inner-side of his heel and foot or  
24 ankle or whatever you'd like to describe, his heel rotated out to the side.  
25 And I'm not sure I can demonstrate this, but it's turning, the heel turned in  
26 what would be a rotational movement like this.”

27 RT 10/7/10, page 198, lines 14-20.

28 ///

1 Dr. Fenton then explained at length how this rotational movement, in combi-  
 2 nation with the plaintiff's position at the time of the kick, caused an injury to the  
 3 plaintiff's medial meniscus. RT 10/7/10, page 198, line 25 - page 200, line 15.

4 "Q. So, based on everything you're told, everything that you've seen, do  
 5 you relate -- and the traumatic nature at the time of this injury, do you  
 6 relate it to the conduct of what Mr. Owens told you?

7 A. Once again, sir, it was, in my mind, consistent with the mechanism of  
 8 injury that I was told, and the findings are all consistent."

9 RT 10/7/10, page 243, lines 3-9.

10  
 11 **2. THERE IS NO REMAINING FACTUAL BASIS ON WHICH THE**  
 12 **PLAINTIFF CAN CLAIM THAT HIS KNEE WAS INJURED IN**  
 13 **THE COURSE OF HIS DETENTION BY DEPUTY CHESHER**

14 In the first trial, the plaintiff and his medical expert Dr. Fenton explicitly  
 15 testified that the injury the plaintiff claimed to have suffered to his knee in the course  
 16 of his detention by Deputy Cheshier was directly related to the deputy having kicked  
 17 the plaintiff during the course of the incident. However, as is discussed in more detail  
 18 in the defendant's MOTION IN LIMINE NO. 1 TO EXCLUDE EVIDENCE THAT  
 19 THE PLAINTIFF WAS KICKED BY DEPUTY CHESHER, the rejection by the jury  
 20 in the first trial of the plaintiff's excessive force claim necessarily means that the jury  
 21 concluded that the deputy did *not* kick the plaintiff during this incident.

22 But if Deputy Cheshier did not kick the plaintiff during this incident, then any  
 23 injury that the plaintiff might have suffered to his knee during this incident could not  
 24 have been caused by the non-existent kick. The plaintiff's medical expert testified the  
 25 injury allegedly suffered was consistent "the conduct of what Mr. Owens told [him]".  
 26 But the only "conduct" by the deputy that Dr. Fenton indicated had been related to him  
 27 by the plaintiff was the kick, and Dr. Fenton testified at length how that kick -- and that  
 28 kick alone -- could have caused the injury which the plaintiff was exhibiting. Dr. Fenton

1 did not indicate that the plaintiff had suggested that any other “conduct” by Deputy  
2 Cheshier caused or contributed to that injury, nor did Dr. Fenton suggest that anything  
3 other than the alleged kick in any way caused or contributed to the injury to the  
4 plaintiff’s knee.

5 But since the jury at the first trial determined that the kick did not actually occur,  
6 and if the non-existent kick was the only mechanism of injury to the plaintiff’s knee  
7 suggested by either the plaintiff or his medical expert at the prior trial, then the only  
8 possibly conclusion is that the plaintiff’s knee was **not** injured in this incident.

9 Federal Rules of Evidence Rule 402 provides that “[i]rrelevant evidence is  
10 not admissible.” Rule 401 provides that “[e]vidence is relevant if: (a) it has any  
11 tendency to make a fact more or less probable than it would be without the evidence;  
12 and (b) the fact is of consequence in determining the action.” Evidence regarding the  
13 alleged injury to the plaintiff’s knee obviously cannot have “any tendency to make a  
14 fact more or less probable” in this re-trial because, as discussed above, the verdict at  
15 the prior trial, plus the testimony at that trial of the plaintiff and his medical expert,  
16 conclusively establish that the plaintiff did not suffer an injury to his knee during  
17 this incident. Therefore, this Court must exclude any evidence the plaintiff or his  
18 witnesses might attempt to introduce relating to this alleged injury.

19 The only way around this would be for the plaintiff and his medical expert to  
20 testify in this new trial that there was some other mechanism of injury that caused the  
21 damage to the plaintiff’s knee during the incident. But that would require the plaintiff  
22 and his expert to repudiate their prior testimony, given at the first trial under oath.  
23 Federal Rules of Evidence Rule 403 permits a court to exclude even relevant evidence  
24 “if its probative value is substantially outweighed by a danger of one or more of the  
25 following: unfair prejudice, confusing the issues, misleading the jury, undue delay,  
26 wasting time, or needlessly presenting cumulative evidence.”

27 Allowing the plaintiff and his medical expert to change their testimony to avoid  
28 the consequences of the jury’s finding that the kick never occurred – the kick that the

1 plaintiff and his medical expert indicated was the sole cause of the plaintiff's knee  
2 injury – would be grossly unfair and highly prejudicial to the defendant. The defen-  
3 dant not only prepared this case based on the plaintiff's claim that the mechanism of  
4 injury to his knee was the alleged kick by Deputy Cheshier, he took that case to trial  
5 and convinced the jury that the alleged kick never took place. The defendant is in  
6 no way prepared to defend against a newly-created claim that an entirely different  
7 mechanism of injury caused the supposed damage to the plaintiff's knee. Nor should  
8 the defendant be required to do so.

### 9 10 **3. RELIEF REQUESTED**

11 For the reasons set forth herein, the defendant respectfully requests the court  
12 to order plaintiff, his counsel, and his witnesses not to make any reference to, mention  
13 of, or attempt to introduce by any means, evidence of any injury to the plaintiff's knee  
14 allegedly suffered by the plaintiff as a result of the incident at issue in this lawsuit.

15  
16 Dated: January 9, 2012

Respectfully submitted,

**MANNING & KASS  
ELLROD, RAMIREZ, TRESTOR LLP**

17  
18 By: /s/ **L. Trevor Grimm**

19 L. TREVOR GRIMM  
Attorneys for Defendants  
COUNTY OF LOS ANGELES, CASEY  
20 CHESHER, ADAM PRUITT and  
21 CHRISTINA MARTINEZ  
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**DECLARATION OF L. TREVOR GRIMM**

I, L. Trevor Grimm, declare as follows:

1. I am an attorney at law, admitted to practice before all courts of the State of California, the United States District Court for the Central District of California, and the Ninth Circuit Court of Appeals. I am a partner at Manning & Kass, Ellrod, Ramirez, Trestor LLP, attorneys of record for defendant CASEY CHESHER herein. I have personal knowledge as to the truth of the following facts, except those set forth on information and belief, and as to those facts I believe them to be true. If called as a witness, I could and would competently testify to the following.

2. Attached hereto as Exhibit 1 is a true and correct copy of the following pages of the reporter's transcript the proceedings that took place on October 6, 2010 during the first trial held in this matter: 71-75.

3. Attached hereto as Exhibit 2 is a true and correct copy of the following pages of the reporter's transcript the proceedings that took place on October 7, 2010 during the first trial held in this matter: 197-200, 243.

4. Since the Court's order of September 7, 2011, I have communicated extensively with plaintiff's counsel, Mr. Casselman, both telephonically and via email correspondence, about the defendant's proposed motions in limine, including this one, and the bases therefor. The communications ranged from months ago through this week. The reason for those communications was, among other things, to attempt to obviate the necessity of bringing this motion. However, the parties were unable to agree upon a solution short of motion practice.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 9th day of January, 2012, at Los Angeles, California.

/s/ **L. Trevor Grimm**  
L. TREVOR GRIMM



# **EXHIBIT 1**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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HONORABLE DOLLY M. GEE, JUDGE PRESIDING

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JAMES JIM OWENS, )  
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Plaintiff, )  
) No. 08-7116DMG  
VS )  
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COUNTY OF LOS ANGELES, et al, )  
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Defendants. )  
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Reporter's Transcript of Proceedings  
JURY TRIAL - DAY TWO  
Los Angeles, California  
WEDNESDAY, OCTOBER, 6, 2010

Anne Kielwasser, CSR, RPR  
Federal Official Court Reporter  
312 North Spring Street, Room 432  
Los Angeles, California 90012  
Phone: (213) 894-2969  
anne.kielasser@gmail.com

1 A. Just the glimpse out of the corner of my eye, that's  
2 all.

3 Q. And did he ask you any questions before he gave you  
4 orders to put your hands behind your back?

5 A. No, he didn't ask me any questions.

6 Q. Did you feel that you were free to leave at that time?

7 A. Not at all.

8 Q. And so, after he made you put your hands behind your  
9 back, what happened next?

10 A. I asked him what was going on.

11 Q. Did he answer you?

12 A. He told me: Police safety. Don't worry about it.

13 Q. Did that answer your question?

14 A. Of course not. I asked him again.

15 Q. Then what?

16 A. He gave me the same answer: Police safety.

17 Q. What was his tone or attitude?

18 A. He was arrogant, he was rude and he was demanding.

19 Q. How did you feel about this at that time?

20 A. I was curious why I was even being stopped. I didn't  
21 know what was going on. I didn't think I should be treated  
22 rudely.

23 Q. Then what happened?

24 A. He kicked my legs out.

25 Q. Okay. And how are -- well, let's back up. Did he

1 physically contact you before he kicked your legs?

2 A. Yes, he grabbed my hands which were behind my back.

3 Q. What part of your hands did he grab?

4 A. My thumbs. I had my -- my, the back of my hands  
5 together, my palms outward behind my back.

6 Q. Did he tell you to do it that way?

7 A. No. He just said: Put your hands behind your back.  
8 And then he grabbed my thumbs.

9 Q. And do you know if he did it with one or two hands?

10 A. I believe it was with one.

11 Q. Did he grab each thumb separately?

12 A. No.

13 Q. So, he squished your thumbs together to hold you?

14 A. Yes, he did.

15 Q. And did you feel you were free to leave then?

16 A. Of course not.

17 Q. Did he tell you were under arrest?

18 A. No, he didn't tell me nothing like that.

19 Q. Did he ask you your name?

20 A. No, he did not.

21 Q. Did he ask you where you live?

22 A. No, he did not.

23 Q. Did he ask you whose car that was?

24 A. No, he did not.

25 Q. Did he ask you what you were doing?

1 A. No, he did not.

2 Q. Did he ask you any questions at that point?

3 A. No, he did not. All he gave was statements.

4 Q. Anything besides what you've already told us?

5 A. Yes.

6 Q. What else did he say at that point?

7 A. Well, at that point I had yelled for Nancy, my fiancée  
8 at the time.

9 Q. So, when he grabbed your thumbs, and you were  
10 restrained by him, is that when you called for her?

11 A. As soon as he kicked my leg out, I called. I screamed  
12 out for her.

13 Q. What happened to your body when he kicked -- by the  
14 way, let's be more specific. What part, which leg did he  
15 kick?

16 A. The inside of my left foot and ankle.

17 Q. Had you told them anything up to that point about,  
18 anything about your body?

19 A. I told him be careful with my knee, if you're going to  
20 do a search. I just had a Cortizone injection that Friday  
21 morning.

22 Q. What did he say, if anything?

23 A. He didn't say nothing to that effect.

24 Q. Did he tell you he wanted you to spread your legs?

25 A. No, he didn't.

1 Q. Did he, like, pull on the material of your clothing,  
2 your sweatpants to move your leg out?

3 A. No, he didn't.

4 Q. Was there any warning that he was going to kick your  
5 leg?

6 A. No warning whatsoever.

7 Q. What part of your leg or foot or ankle did he kick?

8 A. The inside of it.

9 Q. Now, was this a hard enough kick to cause a bruising  
10 or just to move out your leg?

11 A. Just to move my foot out.

12 Q. And then was he still holding on to your thumbs, as  
13 you said, tightly?

14 A. Yes, he was.

15 Q. And then was he making you stand straight up, or were  
16 you being leaned one way or the other, back or forward?

17 MR. GRIMM: Objection. Leading.

18 THE COURT: Sustained.

19 BY MR. CASSELMAN:

20 Q. Were you leaning in any direction?

21 A. I -- sorry. (Witness weeps.) I lost my balance.  
22 (Witness weeps.)

23 MR. CASSELMAN: Excuse me, Your Honor. Mr. Grimm  
24 seems to think this is funny, and he's making --

25 THE COURT: All right, please do not --

1 MR. GRIMM: I'm not intentionally doing anything.

2 THE COURT: Do not exhibit any facial expressions  
3 during the testimony, please.

4 BY MR. CASSELMAN:

5 Q. Can you tell the jury, to the best of your  
6 recollection, what your body did when he kicked it, kicked at  
7 your foot or ankle?

8 A. When my heel went outward, and so the lower part of my  
9 leg completely twisted, and I lost my balance because my foot  
10 started to slip away, and I felt just extreme pain at that  
11 moment, and I lost my balance. But with deputy holding my  
12 hands and my other leg, I've got to control my balance and  
13 stand back up.

14 Q. Where did you feel the pain?

15 A. In my knee, on the inside.

16 Q. Is that a place where you had felt that kind of pain  
17 or any kind of pain before?

18 A. No.

19 Q. Was that similar to the osteochondroma problem you had  
20 above your knee?

21 A. That was extremely worse than any type of pain I've  
22 ever had in my knee.

23 Q. Did you make any kind of a sound or did you just  
24 silently scream, so to speak?

25 A. I yelled Nancy's name.

## **EXHIBIT 2**



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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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HONORABLE DOLLY M. GEE, JUDGE PRESIDING

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JAMES JIM OWENS,	)	
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	)	
	)	
Plaintiff,	)	
	)	No. 08-7116DMG
VS	)	
	)	
COUNTY OF LOS ANGELES, et al,	)	
	)	
	)	
Defendants.	)	
_____	)	

Reporter's Transcript of Proceedings  
JURY TRIAL - DAY THREE  
Los Angeles, California  
THURSDAY, OCTOBER 7, 2010

Anne Kielwasser, CSR, RPR  
Federal Official Court Reporter  
312 North Spring Street, Room 432  
Los Angeles, California 90012  
Phone: (213) 894-2969  
anne.kielasser@gmail.com

1 history?

2 A. Yes.

3 Q. In other words, did he tell you how he got the problem  
4 that he came to you for help about?

5 A. Well, that's when we discussed an incident that when  
6 he had been going out to his wife's car, I believe, and  
7 apparently there had been some type of a problem that someone  
8 had called the sheriff's department to come out onto the  
9 street, and he was outside. And I don't know the particulars  
10 as to how the officer and Mr. Owens got together, but  
11 apparently he was at least a suspect for the moment, as to  
12 the source of the potential problem from which the phone call  
13 came in.

14 And he was describing to us having his -- I  
15 think he was leaning in the window of his wife's car, and I'm  
16 not sure exactly how that, how he subsequently stood up and  
17 was in the presence of the officer; but at some point in our  
18 discussion he told me that the officer had him spread his  
19 legs, and that he had been kicked or pushed, his foot has  
20 been pushed out to the side while he was standing on the leg,  
21 and that in the process of doing this, he created discomfort  
22 and pain on the inner-side of his knee.

23 Q. Did he show you what had been done in terms of the  
24 movements that he made, or did he describe it in words?

25 A. No, we actually went over it.

1 Q. Could you demonstrate for the jury what you believe to  
2 be the injury causing movement based on the information that  
3 you've received to date, not just as of that date.

4 A. I'll speak up because I can't hold the microphone at  
5 the same time.

6 THE COURT: Mr. Grimm, are you able to see?

7 MR. GRIMM: I'll stand.

8 THE WITNESS: I believe at first he described the  
9 officer asking him to put his hands behind his head; and then  
10 subsequently, the officer had him bring his hands or helped  
11 to get his hands behind his back, and then was holding his  
12 thumbs, and I'll turn around, so that this is the way I  
13 understood what we were talking about.

14 His feet were spread apart, like this  
15 (demonstrating), and as the officer apparently applied some  
16 force to the inner-side of his heel and foot or ankle or  
17 whatever you'd like to describe, his heel rotated out to the  
18 side. And I'm not sure I can demonstrate this, but it's  
19 turning, the heel turned in what would be a rotational  
20 movement like this.

21 MR. CASSELMAN: Clockwise for the record, Your  
22 Honor.

23 THE WITNESS: That would be the heel.

24 MR. CASSELMAN: Yes.

25 THE WITNESS: In the process of that happening, he

1 began to fall forward, and he fell off to the right side,  
2 which would put a stress on the inner-side of the knee, and  
3 he would have been bearing weight on the leg at the same  
4 time. So, it would have been a rotational force and a fall  
5 inward like this, and he could not control his balance  
6 because his hands were sequestered.

7 Mechanically, conceptually, what does that  
8 mean from the standpoint of what may have happened, and I'm  
9 going to briefly give you all an anatomy lesson, if I may.  
10 You have to stick a strap along the inside of the knee,  
11 called medial/lateral ligament. Dr. Wagner talked about it.  
12 It's a thick piece of gristle, and it's attached to the end  
13 of the thigh called the femur, and the upper end of the leg  
14 called the tibia.

15 Now, if you can imagine the knee flexing in  
16 this direction normally, you don't want your knee to flex the  
17 opposite, side to side, nobody wants that. But if he was  
18 compressing the knee at the time, his lower leg was rotating  
19 and at the same time was angulating, you can imagine that  
20 this C shaped structure, which is more normally demonstrated  
21 on the outer half of the joint, could become pinned between  
22 two surfaces, the end of the thigh bone and the upper end of  
23 the lower leg, and it could be caught and ripped.

24 And the consistency of this material is like  
25 your ear. It's the same material that your ear is made out

1 of. So, it can rip, and we call that medial meniscal tear,  
2 because it's the inner side, is called the medial side of the  
3 leg.

4 At the same time, the strap called the  
5 collateral ligament, would be put under tension. And if you  
6 look at it, and what is diagrammatically shown here, it's  
7 made up of thousands of thousands of super thin bristle,  
8 called collagen. And so, you could tear some of these fibers  
9 without tearing the entire structure, and that was the  
10 differentiation that Dr. Wagner made between a tear and a  
11 rupture.

12 If you can imagine a rupture, you can either  
13 tear it here, or you can tear it off of the bone at either  
14 end. In this particular case, it was more of a stretching  
15 type of injury and had microscopic tear.

16 Now, to get back to your question I believe  
17 you asked me a moment ago, when he came in, on my  
18 examination, as compared to three days earlier, when he had  
19 tenderness up here.

20 MR. CASSELMAN: Indicating by the osteochondroma,  
21 for the record.

22 THE WITNESS: I'm sorry. He now is describing  
23 tenderness and pain along the collateral ligament and along  
24 the gap between the two bones which is called the medial  
25 joint line. It's a little indentation. You can feel it on

1 about a bicycle or rollerblading or something?

2 A. No.

3 Q. So, based on everything you're told, everything that  
4 you've seen, do you relate -- and the traumatic nature at the  
5 time of this injury, do you relate it to the conduct of what  
6 Mr. Owens told you?

7 A. Once again, sir, it was, in my mind, consistent with  
8 the mechanism of injury that I was told, and the findings are  
9 all consistent.

10 Q. Fair enough.

11 MR. CASSELMAN: Nothing further. Thank you.

12 MR. GRIMM: Nothing further.

13 THE COURT: Thank you very much, Dr. Fenton.  
14 You're excused.

15 THE WITNESS: Thank you.

16 THE COURT: All right, it's now too late to have  
17 Ms. English come back, I think.

18 MR. CASSELMAN: Well, it all the depends on the  
19 Court.

20 THE COURT: I thank the ladies and gentlemen of  
21 the jury for your patience. And tomorrow we have how many  
22 witnesses, two or three?

23 MR. CASSELMAN: Well, I think two, in my case,  
24 maybe we're halfway through one of them.

25 THE COURT: And you have one other who cannot come